

APR 10 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARIO EDWIN MARINERO-TURCIOS,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 06-72064

Agency No. A36-277-928

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued March 6, 2008
Resubmitted April 7, 2008
Pasadena, California

Before: GIBSON**, O'SCANNLAIN, and GRABER, Circuit Judges.

Marinero-Turcios petitions for review of the Board of Immigration Appeals'
(BIA) decision to deny his motion to reopen and reconsider its dismissal of his

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable John R. Gibson, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

appeal of the immigration judge's order of removal. He argues that he is not an alien but a United States citizen.

The BIA is required to ascertain whether new evidence, when considered together with the evidence presented at the original hearing, would establish prima facie eligibility for the relief sought. *See Bhasin v. Gonzales*, 423 F.3d 977, 984 (9th Cir. 2005). Here, the BIA held that the facts presented were insufficient to carry Marinero-Turcios's burden of proof that he was a United States citizen. We are satisfied the BIA applied the correct legal standard; there simply is no evidence in the record that he was under eighteen years of age when his father became naturalized. *See* Immigration and Nationality Act, § 321(a), 8 U.S.C. § 1432 (1988).

DENIED.